MISCELLANY.

Chickens and Men of Color.—In State *v.* Taylor, 169 N. W. 629, 631, the Supreme Court of Iowa, said: "There may be a popular impression that an unguarded chicken offers peculiarly strong temptation to a man of color; it is an equally popular impression that a chicken well cooked in any style appeals with very strong inducement to men in holy orders without regard to color; but we trust the point is not yet reached when the mere fact that a colored porter or lily white minister of the gospel is seen upon the street at night with a suit case in his hand is judicially held sufficient to convict him of being a chicken thief, even though it should appear that on the self-same night some evil-minded person had burglarized a poultry coop somewhere in the city."

Human Toes in Chewing Tobacco.—In Pillars *v.* R. J. Reynolds Tobacco Co., 78 So. 365, 366, the Supreme Court of Mississippi said: "We can imagine no reason why, with ordinary care, human toes could not be left out of chewing tobacco, and if toes are found in chewing tobacco, it seems to us that somebody has been very careless."

Negligence—Injury to Volunteer in Whose Presence the Defendant Has an Interest.—The plaintiff, a professional dancer, by consent of the defendants, voluntarily attended and took part in the rehearsals for a revue to be given by the defendants, in the hope that she would thereby obtain an engagement in the revue when produced. She was under no contract with the defendants. While attending a rehearsal she was injured by the negligence of a servant of the defendants. Held that the plaintiff was a "volunteer with a private interest," and as such not in common employment with the defendants' servant, and so was entitled to recover her damages from the defendants (Haywood *v.* Moss Empires, Lim. 1917, C. A., 117 L. T. Rep. 523).

Ordinarily a mere volunteer assisting in the master's work is, as regards the master, in no better position than a trespasser, and can not claim higher protection than that the master himself, and learning of his presence, shall not willfully or carelessly injure him (Degg *v.* Midland R. R., 1857, Exch., 1 H. & N. 773). Consequently, if injured by the negligence of a servant, he can not recover against the master (Eason *v.* S. & E. T. R. R., 186, 685 Tex. 577; see 1918, Yale Law Journal 415). A mere licensee stands in much the same position (Benson *v.* Baltimore Traction Co., 1893, 77 Md. 535, 26 Atl. 973). But a licensee who is on the premises on the owner's

business, or on business in which both have a common interest, is entitled to the same rights as an invitee (Holmes *v.* N. E. R. R. 1871, L. R. 6, Ex. 123). There being no difference in rights there seems little reason for the distinction in terms drawn by the English cases. And American cases call such persons invitees; in fact many cases seem to say that this is the test of an invitee; whether he is there for the benefit of the owner, or whether there is some mutuality of interest in the subject of the visit (Plummer *v.* Dill, 1892, 156 Mass. 426, 31 N. E. 128; Benson *v.* Baltimore Traction Co., supra; Clopp *v.* Mear, 1890, 134 Pa. 203, 19 Atl. 504). To such persons, English and American authorities agree, the owner is under a general duty of care to prevent injury; he is responsible to them for his own negligence and that of his servants (Indermaur *v.* Dames, 1867, Ex. Ch., L. R., 2 C. P. 311; Clopp *v.* Mear, supra). Had the plaintiff gone on the stage without invitation, merely to apply for employment, she might have been considered a mere licensee (cf. Larmore *v.* Crown Point Iron Co., 1886, 101 N. Y. 391, 4 N. E. 752). On the other hand, in the actual case her position approached closely that of a fellow servant, and to apply the fellow servant rule to her would have involved no great extension of it. The rule was first developed as an application of the broader doctrine of assumption of risk (see Farwell *v.* Boston & Worcester R'y, 1842, Mass., 4 Met. 49; Hutchinson *v.* York, etc., R'y, 1850, 5 Ex. 343, 351 ff). And the view that assumption of risk necessarily depends on contract seems unsound (3 Labatt, Master & Servant, 2d ed., § 1285 ff). It is better explained along the lines of volenti non fit injuria. But the fellow servant rule itself has been much criticised as an unwarranted outgrowth of this principle, and a further extension of it, however slight, is hardly to be desired.—Yale Law Journal, June, 1918.

McKinley's First Case and Another.—A little over a year after the close of the Civil War McKinley was a briefless young lawyer in the then little town of Canton, Ohio.

He had studied first in the office of Judge Charles E. Glidden, of Poland, going from there to the Law School at Albany, N. Y. Judge Glidden was one of the great men of that part of the state in those days, imposing of presence, eloquent, with a singularly persuasive voice, and a man of the highest integrity. A man who knew Judge Glidden well, and has heard Mr. McKinley speak, has said of the latter, writing for Porter's account of his life:

"His passionate, earnest manner when he is excited, always recalls to me the manner of the able man whose pupil he was."

Mr. McKinley was graduated at Albany and admitted to the bar in 1867.

His "shingle" was hung out forthwith at the door of a little office

of his own in Canton, and he waited patiently for clients. Days passed, and a fortnight. Then one day in came his old preceptor, Judge Glidden.

"McKinley," said he, "here are the papers in a case of mine. It comes up tomorrow. I have got to go out of town, and I want you to take charge of it for me."

McKinley was nonplussed. He declared that he could not do justice to the case at so short a notice. "I never have tried a single case yet, Judge," said he.

"Well, begin on this one, then," was the Judge's reply. And it was finally settled that McKinley should do so. He sat up all night working on the case, tried it next day, and won it. A few days later Judge Glidden entered his office and handed him $25. McKinley demurred at taking it.

"It is too much for one day's work," he said.

"Don't let that worry you," replied Glidden good-naturedly. "I charged them $100 for the case, and I can well afford a quarter of it to you."

A year or two later McKinley found himself pitted against John McSweeney, then considered one of the most brilliant lawyers of the Ohio bar. The case was a suit for damages for malpractice, the plaintiff charging that a surgeon had set his broken leg in such a way as to make him bow-legged on that side. McKinley defended the surgeon. McSweeney brought his client into court and had the injured limb exposed to the view of the jury. It certainly was very crooked, and the case looked bad for the surgeon. McKinley had both his eyes wide open, however, and fixed them to good purpose upon the man's other leg. As soon as the witness was turned over to him, he asked that the other leg should also be bared. The plaintiff and McSweeney vigorously objected, but the Judge ordered it done. Then it appeared that this second leg was still more crooked than that which the surgeon had set.

"My client seems to have done better by this man than nature itself did," said McKinley, "and I move that the suit be dismissed with a recommendation to the plaintiff that he have the other leg broken and then set by the surgeon who set the first one."—Ex.

MEETING OF VIRGINIA BAR ASSOCIATION.

The Annual Meeting of the Virginia State Bar Association will be held this year at the Jefferson Hotel in Richmond, May the 15th to 17th. There will be an important discussion on matters connected with Federal and international relations, on the subject of the pending League of Nations. The annual address will be delivered by Mr. Coudert, the distinguished lawyer of New York.